IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MFA.No. 1276 of 2002(A)

AGAINST THE ORDER DATED 17/04/2002 IN E.I.C 82 /1992 IN E.I.C.30/1994 of EMPLOYEES INSURANCE COURT, KOZHIKODE

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APPELLANT: (RESPONDENT)

THE REGIONAL DIRECTOR, EMPLOYEES
STATE INSURANCE CORPORATION, PANCHADEEP
BHAVAN, THRISSUR - 680 020.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, RAILWAYS

RESPONDENTS: (APPLICANT)

M/S.KIDSON TELEVISION (PRIVATE) LIMITED,
M/S.KIDSON ENTERPRISES & M/S.SARITHA AGENCIES,
REPRESENTED BY ITS MANGING DIRECTOR,
SRI.K.SOMASUNDARAN, SON OF IMBICHI, K.SUDI VIHAR,
11/17, KURIAL LANE, CALICUT - 1.

BY ADV. SRI.U.K.RAMAKRISHNAN
SMT.P.VIJAYAMMA
SRI.V.KRISHNA MENON
SMT.UMA GOPINATH
SRI.DEVIDAS.U.K
SRI.SAJEEV ASHOK

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, ALONG WITH M.F.A.No.7/2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.Nos. 1276 of 2002 &
7 of 2003

Dated this the 13th June, 2007.

J U D G M E N T

The Employees State Insurance Corporation is the appellant in both these appeals. These appeals are filed challenging the common judgment of the Employees Insurance Court, in short 'Insurance Court', Kozhikode, in E.I.C.Nos.82/1992 & 30/1994.

2. The Inspector of the appellant inspected the establishments of M/s.Kidson Electronics (P) Ltd. and M/s.Kidson Television (P) Ltd. and sent a report to the appellant to the effect that these two establishments can be clubbed together and treated as a single unit, for the purpose of coverage. Similarly, another inspection was conducted in M/s.Kidson Television (P) Ltd., M/s.Saritha Agencies, and M/s.Kidson Enterprises, and forwarded a report to the appellant, to the effect that these three establishments can be clubbed together and treated as a single unit, for the purpose of coverage. That recommendations were accepted and actions were initiated against the concerned respondents. The respondents filed E.I.C.Nos.82/1992 & 30/1994 before the Insurance Court, Kozhikode.

After trial, the Insurance Court held, that M/s.Kidson Electronics (P) Ltd. was not liable to be covered under the E.S.I. Act; that M/s.Kidson Electronics (P) Ltd., and M/s.Kidson Electronics cannot be clubbed together; that M/s. Kidson Television (P) Ltd. was not liable to be covered under the E.S.I. Act; and M/s.Kidson Television (P) Ltd., M/s.Kidson Enterprises and M/s.Saritha Agencies cannot be clubbed together and covered under the E.S.I. Act, and quashed all the notices issued to those establishments. Challenging the above decision of the Insurance Court, M.F.A.Nos.1276/2002 & 7/2003 have been filed against E.I.C.Nos.30/1994 and 82/1994 respectively.

3. The learned counsel appearing for the appellant had tenuously argued before me that the reasonings stated by the Insurance Court for disallowing the steps taken by the appellant to club these institutions together is faulty and are illegal. He further placed reliance on Exts.D1 and D6 reports, and submitted that the Insurance Court did not consider the relevancy of the reports, and did not give any legal sanctity or authenticity to those reports. The Insurance Court found that the reports were prepared not at the spot of inspection, but subsequently. The reasons stated by DW.1, who was one of the members of the Inspection team was that inspection

reports were prepared, based on the notes prepared at the time of inspection. But no such draft notes were produced before the court. So, the Insurance Court did not give any value to those reports. It was also held in Paragraph 14 of the judgment that the stipulation of minimum employment strength of 10 persons has not been satisfied with regard to M/s.Kidson Electronics (P) Ltd.

4. It is to be noted that the attempt of the appellant to bring Kidson Electronics (P) Ltd. within the definition of the Factories and not as a shop, was found against by the Insurance Court, assigning very valid reasons. One of the main argument raised by appellant is that M/s.Kidson Electronics (P) Ltd. is using power for the purpose of soldering the materials with the heating element, and that is sufficient to satisfy the definition of factory. But the Insurance Court did not accept that argument. I also do not find any reason to differ from the view taken by the Insurance Court.

5. In paragraph 22 of the judgment, the Insurance Court has considered Ext.D6 report in detail, and came to the conclusion that the request of the appellant to club M/s.Kidson Television (P) Ltd., M/s.Saritha Agencies, and M/s.Kidson Enterprises

cannot be allowed. In view of the unsatisfactory nature of reports, the view taken by the Judge, Insurance Court, cannot be said to be perverse or illegal. No question of law arises in these appeals for consideration. Hence these appeals are only to be dismissed.

In the result, the appeals are dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A. Nos. 1276/2002 & 7/2003

J U D G M E N T

Dated: 13th June, 2007.